

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR

[ORIGINAL JURISDICTION]

Company Petition No. 18 of 2016

[Demure Dealers Pvt. Ltd., Yavatmal Transferor-1]

AND

Company Petition No. 19 of 2016

[Acuity Tie Up Pvt. Ltd., Yavatmal Transferor-2]

AND

Company Petition No. 16 of 2016

[Manav Commotrade Pvt. Ltd. Transferor-3]

AND

Company Petition No. 20 of 2016

[Twinkle Dealcomm Pvt. Ltd., Yavatmal Transferor-4]

AND

Company Petition No. 17 of 2016

[Automark Industries (India) Ltd., Yavatmal Transferee]

CORAM : R.K. DESHPANDE, j.

Date : 22nd April, 2016

Mr. Nitin Lalwani, Adv., for the petitioners.

Mr. Raj D. Wakode, Adv., for respondent – Regional Director.

FINAL ORDER :

01. The above Petitions came up for hearing on 22.01.2016 for sanction of the Scheme of Amalgamation of M/s. Demure Dealers Private Limited, Transferor-1, M/s. Acuity Tie Up Private Limited, Transferor-2, M/s. Manav Commotrade Private Limited, Transferor-3 and M/s. Twin kle Dealcomm Private Limited, Transferor-4 (hereinafter referred to as the Transferor Companies) into M/s Automark Industries (India) Limited (hereinafter referred to the Transferee Company). The court examined the Petition filed by the Petitioner Transferor Companies and Transferee Company. The Petitioner Transferor Companies and the Transferee Company had earlier filed Company Application No. 03, 05, 02, 01 and 04 of 2016 respectively seeking directions of this Court for dispensation/convening of meetings. Vide order dated 15.01.2016, this Court allowed all the Applications and dispensed with the requirement of convening meetings of Shareholders, Secured and Un-secured Creditors of the Transferor Companies and the Transferee Company.

02. The Petitioner Transferor Companies and the Transferee Company have thereafter filed the present petitions seeking sanction of the Scheme of Amalgamation. This Court vide order dated 22.01.2016 had directed notice of petition to be issued to the Regional Director,(Western Region), Mumbai, Registrar of Companies, Mumbai and the Official Liquidator, Nagpur. Citations were also directed to be published in 'Lokmat' (Marathi) and 'Lokmat Times' to Petitioner Transferor Companies and Petitioner Transferee Company for the next date of hearing. Affidavit of service has been filed by the petitioners showing compliance regarding service on Regional Director, Western Region, Registrar of Companies, Mumbai and the Official Liquidator and also regarding publication of citation in the aforesaid newspapers.

03. The court examined the report filed by the official Liquidator stating therein that the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its member or Creditors or the public.

04. The Court also examined the Affidavit filed by the Learned Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai submitted in this Court on behalf of

the Central Government. In para No. 6 the Regional Director has expressed that there is no impediment in sanctioning the scheme of amalgamation, provided the surplus if any arising out of this scheme shall be credited to Capital Reserve Account and deficit if any arising shall be debited to Goodwill Account of the Transferee Company and the tax issue, if any, arising out of the Scheme shall be subject to final decision of Income Tax Authority and the approval of the Scheme by this Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The petitioner Transferee Company and Transferor Companies have given an undertaking dated 18.04.2016, to the Court, that the surplus if any arising out of this scheme shall be credited to Capital Reserve Account and deficit if any arising shall be debited to Goodwill Account of the Transferee Company and the tax issue, if any, arising out of the Scheme shall be subject to final decision of Income Tax Authority. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Company.

05. In view of the aforesaid undertaking given by the Petitioner Companies, this court is satisfied that the points raised by the Learned Regional Director have been duly answered in the Court.

06. Upon hearing Mr. Nitin Lalwani, Advocate for the Petitioner, Mr. Raj. D. Wakode, for respondent- Regional Director, and Official liquidator and in view of the approval of the Scheme of Amalgamation by the Shareholders and Creditors of the Transferor Companies and the Transferee Company; and there being no investigation proceedings pending in relation to the Petitioner Companies under section 235 to 251 of the Companies Act,1956.

07. THIS COURT HEREBY SANCTION THIS SCHEME OF ARRANGEMENT as filed along with the company petition and hereby declare the same to be binding on all the shareholders and creditors of the transferor companies and the transferee company and all concerned and all approve the said scheme of arrangement with effect from the appointed date i. e., 01st April, 2015.

08. This Court hereby orders:

- [i]** That, all the property, rights and powers of the transferor companies specified in the schedules hereto and all other property, rights and powers of the transferor companies be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 394(2) of the Companies Act, 1956 be transferred to and vest in transferee company for all the estate and interest of the transferor companies therein, but subject nevertheless to all charges now affecting the same, and
- [ii]** That , all the liabilities and duties of the transferor companies be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 394 (2) of the Companies Act, 1956 be transferred to and become the liabilities and duties of the transferee company; and
- [iii]** That, all the proceedings now pending by or against the transferor companies be continued by or against the transferee company; and
- [iv]** That, the transferee company do without further application allot to members of the transferor companies shares in the transferee company as is required in clause 7 of the

compromise or arrangement herein, to which they are entitled ; and

[v] That, the transferor companies do within 30 days after the date of this order cause a certified copy of this order be delivered to the Registrar of Companies, Mumbai for registration and such certified copy being so delivered the transferor companies shall be dissolved and the Registrar of Companies, Mumbai shall place all documents relating to the transferor companies and register with him in the file kept by him in relation to the transferee companies and the files relating to the all companies shall be consolidated accordingly and

[vi] That any person interested shall be at liberty to apply to the court in the above matter for any directions that may be necessary.

Judge

-0-0-0-0-

